

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES SECURITIES AND ) Docket No. 18 C 5587  
EXCHANGE COMMISSION, )  
Plaintiff, )  
v. ) Chicago, Illinois  
EQUITYBUILD, INC., et al., ) August 31, 2018  
Defendants. ) 10:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiff: U.S. SECURITIES AND EXCHANGE  
COMMISSION, by  
MR. BENJAMIN J. HANAUER  
MS. ARIELLA OMHOLT GUARDI  
175 West Jackson Boulevard  
Suite 900  
Chicago, Illinois 60604

For the Defendants: BRAGANCA LAW LLC, by  
MS. CELIZA BRAGANCA  
230 South Clark Street  
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Chicago, Illinois 60604  
  
LAW OFFICES OF MARK L.  
ROSENBERG, by  
MR. MARK LOUIS ROSENBERG  
7101 Wisconsin Avenue  
Suite 1201  
Bethesda, Maryland 20814  
(appearing telephonically)

ALEXANDRA ROTH, CSR, RPR  
Official Court Reporter  
219 South Dearborn Street  
Room 1224  
Chicago, Illinois 60604  
(312) 408-5038

1 APPEARANCES: (Continued)

2 For the Receiver:

RACHLIS DUFF ADLER PEEL &  
KAPLAN, LLC, by  
MR. MICHAEL RACHLIS  
542 South Dearborn Street  
Suite 900  
Chicago, Illinois 60605

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1 (Proceedings had in open court:)

2 THE CLERK: No. 18 CV 5587, United States Securities  
3 and Exchange Commission versus Equitybuild.

4 MS. BRAGANCA: Good morning, your Honor. Lisa  
5 Braganca for defendants.

6 MR. HANAUER: Good morning, your Honor. Ben Hanauer  
7 and Ariella Guardi for the SEC.

8 MR. RACHLIS: Good morning, your Honor. Michael  
9 Rachlis on behalf of the receiver, Kevin Duff, who is here as  
10 well.

11 MR. DUFF: Good morning, your Honor.

12 MR. ROSENBERG: Good morning, your Honor. Mark L.  
13 Rosenberg on behalf of the defendants.

14 THE COURT: All right. Good morning, everyone.

15 So I have reviewed the motion that was filed by the  
16 Braganca firm as well as Mr. Rosenberg's office with regard to  
17 reimbursement of fees and expenses. I have reviewed the SEC  
18 response as well as the reply that I ordered defendants to  
19 file.

20 Is there anything that anyone would like to add in  
21 addition to what they submitted in writing?

22 MR. RACHLIS: Your Honor, the receiver did submit a  
23 very brief I would call it response, I call it surreply. But  
24 we submitted that yesterday afternoon directly in response to a  
25 few statements that arose from Ms. Braganca's reply brief.

1 MS. BRAGANCA: Your Honor, I would just like to  
2 respond. The statement that was made in the reply brief that  
3 the Court requested was that the Equitybuild receiver had not  
4 filed any objection, which was the case.

5 MR. RACHLIS: We'll allow your Honor to review that.  
6 But I am happy to summarize what is a relatively short  
7 statement, which included a correction of the record as well as  
8 an equitable point.

9 (Brief pause.)

10 THE COURT: All right. Anything else?

11 MS. BRAGANCA: Yes, your Honor. I just wanted to  
12 mention that on August 17, immediately after you entered the  
13 TRO, asset freeze and receiver's order, we raised the issue  
14 with you of -- with the Court of attorneys' fees and living  
15 expenses. And you had asked that we file a motion. And that  
16 is exactly what we did on Monday, the first business day after  
17 that hearing.

18 So that's what we have before you today.

19 THE COURT: No, I understand that. Anything else?

20 MR. HANAUER: Yes, very briefly, your Honor. And just  
21 to respond to counsel's reply brief, that reply brief does not  
22 dispute that the retainer came from the receivership entities  
23 as opposed to the Cohens' personal assets. It does not dispute  
24 that the retainer came in after counsel was aware of the SEC's  
25 filing and the SEC's request for an asset freeze. Does not

1 dispute that the money that counsel seeks to be paid with comes  
2 from defrauded investors, and does not dispute that counsel  
3 continued to bill against that retainer after the asset freeze  
4 had been entered and after the receivership order was in place.

5 So again, all these things that counsel does not  
6 dispute further supports denying the fee request.

7 MS. BRAGANCA: Your Honor, I'd like to respond to --

8 THE COURT: No need.

9 Okay. Under established law, this Court has broad  
10 jurisdiction to modify order freezing the assets of defendants  
11 in order to authorize payment of reasonable attorneys' fees and  
12 costs related to defendants' defense of the action. See  
13 example SEC v. Quinn, 997 F.2d 287 at 289, Seventh Circuit  
14 1993. And SEC versus Duclaud, D-u-c-l-a-u-d, Gonzalez de  
15 Castilla, C-a-s-t-i-l-l-a, 170 F.Supp. 2d, 428, Southern  
16 District of New York 2001.

17 Here defendants provided two wire transfers of \$10,000  
18 each, or \$20,000 in total, to their attorneys of record so that  
19 they can be represented during the Court's consideration of the  
20 SEC's motion for temporary restraining order and preliminary  
21 injunction. And the work for which the attorneys now seek  
22 reimbursement is work that they performed leading up to, during  
23 and immediately following the TRO hearing when the parties were  
24 still in the process of negotiating the consent judgment, which  
25 was eventually filed by the SEC on August 23, 2018.

1           The Court further notes that although defendants have  
2 agreed not to challenge liability here, although they are not  
3 agreeing to it either, I understand, they are contesting the  
4 amount of their assets that can be attributed to the fraudulent  
5 conduct at issue.

6           Furthermore, the SEC has previously informed the Court  
7 that it believes that Mr. Cohen has approximately \$500,000 in  
8 cash assets, and the defendants together have a possessor  
9 interest in a number of real estate properties throughout this  
10 locality.

11           Is there a comment?

12           MR. HANAUER: Yes, there is, your Honor, and that is  
13 to clarify that last statement. And that was made -- about the  
14 \$500,000. That was made in the course of the TRO hearing based  
15 on the information we had last -- in May.

16           Since the receiver has come in, taken the work, got a  
17 better understanding of the books, it's now the SEC's and the  
18 receiver's understanding that there is far less money in the  
19 receivership estate than the SEC or anyone anticipated. I can  
20 let the receiver speak to that. But I think the Court should  
21 be aware that the situation is much bleaker than even we  
22 realized when we were in front of you two weeks ago, your  
23 Honor.

24           THE COURT: How much is there?

25           MR. RACHLIS: I'll let the receiver address that

1 question, your Honor.

2 MR. DUFF: The cash that we have recovered so far,  
3 \$160,000. That's money that we were able to claw back that had  
4 been transferred by Mr. Cohen to his daughter and to a friend.  
5 I understand there is another 12,000 that was transferred to a  
6 friend that has not yet been -- as far as I know, has not yet  
7 made it to the receiver's account.

8 My understanding is that Shaun Cohen and his wife --  
9 at this point I have not seen an account that has more than a  
10 very small amount of money in it. We did address an expense  
11 issue that's already dealt with with respect to the accounts  
12 that are personally in Jerry Cohen's name.

13 Again, for the most part small amounts. There is one  
14 account that has approximately \$68,000. And that's it.

15 MS. BRAGANCA: Your Honor, may I just --

16 THE COURT: No.

17 MS. BRAGANCA: Okay. Thank you.

18 THE COURT: So apparently it appears that Jerry Cohen  
19 has approximately \$160,000 worth of cash assets or thereabouts.  
20 And as I said, defendants together have possessor interest in  
21 one form or another of a number of real estate properties,  
22 although it's subject to the receiver's investigation that's  
23 ongoing now.

24 In any event, given all of these factors, considering  
25 all these factors, the Court finds that allowing reimbursement

1 sought by Braganca Law LLC and Law Offices of Jeffrey Friedman  
2 for the work they performed through August 19 is reasonable and  
3 appropriate here. After all defendants should be entitled to  
4 legal representation for the defense in this case, at least  
5 through the entry of the consent judgment.

6 Accordingly, for all those reasons, the Court grants  
7 the motion to the extent that the Braganca law firm will be  
8 allowed to use the 20,000 retainer to pay for the fees and  
9 costs incurred through August 19, 2018. And, furthermore, the  
10 remaining \$1,231.88 shall be released by the receiver from the  
11 receivership assets.

12 That's my ruling with regard to the motion. Any  
13 questions?

14 Okay. Very good. We will see you in November.  
15 (Which were all the proceedings heard in this case.)

16 CERTIFICATE

17 I HEREBY CERTIFY that the foregoing is a true, correct  
18 and complete transcript of the proceedings had at the hearing  
19 of the aforementioned cause on the day and date hereof.

20  
21 /s/Alexandra Roth

9/20/2018

22 \_\_\_\_\_  
23 Official Court Reporter  
24 U.S. District Court  
25 Northern District of Illinois  
Eastern Division

\_\_\_\_\_  
Date